

**UNITED STATES DISTRICT COURT**

## **DISTRICT OF NEVADA**

Constantino Basile,  
Plaintiff(s),  
vs.  
The Los Angeles Film School, L  
Defendant

2:24-cv-00108-APG-MDC

## Order

The Los Angeles Film School, LLC, *et al.*,  
Defendant(s).

Pending before the Court are *pro se* plaintiff Constantino Basile's *Motion For Reconsideration* (ECF No. 78) and *Motion To Compel With Service Of Process* ("Motion to Compel") (ECF No. 79). The *Motion For Reconsideration* is denied as moot. The Motion to Compel is also denied.

## **DISCUSSION**

## I. Motion for Reconsideration (ECF No. 78)

On April 30, 2024, plaintiff filed a Motion to Compel (ECF No. 73), requesting for the Court to compel defendants to either answer the Complaint (ECF No. 1) or waive service. On May 22, 2024, the Court denied the Motion because plaintiff failed to cite to any authority for such relief. ECF No. 77. On May 23, 2024, plaintiff filed a Motion for Reconsideration (ECF No. 78) of the Court's Order (ECF No. 77). On May 28, 2024, plaintiff filed a new Motion to Compel (ECF No. 79), requesting for the Court to compel defendants to either answer the Complaint or waive service. Given that a new Motion to Compel was filed, the Court denies as moot the Motion for Reconsideration (ECF No. 78).

## II. Motion to Compel (ECF No. 79)

Plaintiff requests that the Court compel defendants to either waive service or respond to the Complaint. ECF No. 79. Plaintiff asserts that “[a]ll elements to proper service of process have taken place with regard to Defendants in compliance with all service of process rules applicable.” ECF No. 79 at 5:19-20. Plaintiff asks the Court to alter its Order (ECF No. 77) and “compel these remaining

1 Defendants to Respond, and/or file their waiver and be given their time to hire counsel.” ECF No. 79 at  
 2 5:21-24.

3 **a. Legal Standard**

4 The Federal Rules of Civil Procedure provide that a defendant must be served within 90 days  
 5 after the complaint is filed. Fed. R. Civ. P. 4(m)<sup>1</sup>. Service may be completed following either the federal  
 6 rules or the state law of the state where the district court is located or where service is made. Fed. R.  
 7 Civ. P. 4(e)(1). The plaintiff may also “notify such a defendant that an action has been commenced and  
 8 request that the defendant waive service of summons.” Fed. R. Civ. P. 4(d)(1). “In the absence of service  
 9 of process (or waiver of service by the defendant), a court ordinarily may not exercise power over a  
 10 party the complaint names as defendant.” *Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 350,  
 11 119 S. Ct. 1322, 1327 (1999) (internal citations omitted).

12 Once service has been completed or waived, “a defendant must serve an answer within 21-days  
 13 after being served with the summons and complaint” or within 60-days if it has waived service under  
 14 Rule 4(d). Fed. R. Civ. P. 12(a)(1)(A)(i), (ii). “[A] defendant may file a number of responsive pleadings  
 15 – all of which fall under the category of *answering* a complaint. A motion to dismiss is just one  
 16 document a defendant may use to answer a summons and complaint.” *Mccullough v. Fed. Bureau of*  
 17 *Prisons*, 2009 U.S. Dist. LEXIS 6881, at \*7-8, 2009 WL 161194 (E.D. Cal. Jan. 21, 2009) (internal  
 18 citations omitted); *see also Ass'n of Irritated Residents v. Fred Schakel Dairy*, 2005 U.S. Dist. LEXIS  
 19 36769, at \*10-11 (“the Ninth Circuit ‘allows a motion under Rule 12(b) any time before the responsive  
 20 pleading is filed,’ even if filed outside the time limits of Rule 12(a)(1)”) (citing *Aetna Life Ins. Co. v.*  
 21 *Alla Medical Services, Inc.*, 855 F.2d 1470, 1474 (9th Cir. 1988)).

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25 <sup>1</sup> The Nevada Rules of Civil Procedure allows for 120-days to serve the Complaint. N.R.C.P. 4(e)(1).

### b. Analysis

Plaintiff requests that the Court compel defendants to either waive service or respond to the Complaint. ECF No. 79. There are several deficiencies with plaintiff's motion, therefore the Motion to Compel (ECF No. 79) is **denied**.

Plaintiff requests that the Court compel defendants to respond to the Complaint. ECF No. 79. Several defendants have already responded to plaintiff's Complaint (ECF No. 1) by filing a Motion to Dismiss. *See* ECF Nos. 13, 26, 29, 38, 58, 64. As noted above, a motion to dismiss is an alternative to filing an answer to the complaint. *See McCullough*, 2009 U.S. Dist. LEXIS 6881, at \*7-8, 2009 WL 161194. To the extent plaintiff requests the Court compel the remaining defendants file a waiver or response to the Complaint, there are several deficiencies with the request.

Plaintiff requests that the Court compel defendants to file a waiver, citing Rule 4(d) of the Federal Rules of Civil Procedure. ECF No. 79 at 5-7. However, plaintiff misconstrues the rule as *requiring* defendants to file a waiver. The rule has no such provision. Instead, the rule states that defendants have a duty to “avoid unnecessary expenses of serving the summons” and that in the face of a failure to file a waiver, courts impose upon defendants “the expenses later incurred in making service.” *See* Fed. R. Civ. P. 4(d)(1), (2). The Court has no authority to compel a defendant who chooses not to waive service to file a waiver, it can only instead, impose fees upon the defendant. *Id.*

Plaintiff asserts that “all elements to proper service of process have taken place with regard to Defendants in compliance with all service of process rules applicable.” ECF No. 79 at 5:19-20. For several defendants, plaintiff states that service was completed by mail or email. ECF No. 20; 79. However, Plaintiff “cannot serve an individual or nongovernmental company by certified mail under either federal or Nevada law.” *Hayes v. GKS Dev., Inc.*, 2024 U.S. Dist. LEXIS 39787, at \*2, 2024 WL 894676 (D. Nev. March 1, 2024) (internal citations omitted); *Metha v. Partners*, 2023 U.S. Dist. LEXIS 19281, at \* 3, 2023 WL 1782356 (D. Nev. Feb. 6, 2023) (“Service by mail is not permitted under Nevada or federal law.”); *Campbell v. Gasper*, 102 F.R.D. 159, 161 (D. Nev. May 18, 1984) (citation

1 omitted) (“Service by mail, even if actually effected, does not constitute personal service.”). Therefore,  
 2 service wasn’t actually completed for the defendants that plaintiff served by mail. Furthermore, although  
 3 Nevada and the Ninth Circuit permits service by email, plaintiff has not properly effected service upon  
 4 the defendants. *See Nev. R. Civ. P. 4.4(d)(1); see also Rio Props., Inc. v. Rio Intern. Interlink*, 284 F.3d  
 5 1007, 1014-15 (9th Cir. 2002) (holding that service by email is permitted when it is “reasonably  
 6 calculated, under all the circumstances, to apprise the interested parties of the action and afford them an  
 7 opportunity to present their objections.”).

8 The Nevada Rules of Civil Procedure 4.4(b) provides that:

- 9 (1) If a party demonstrates that the service methods provided in Rules 4.2, 4.3,  
 10 and 4.4(a) are impracticable, the court may, upon motion and without notice to the  
 11 person being served, direct that service be accomplished through any alternative  
 12 service method.
- (2) A motion seeking an order for alternative service must:
  - (A) provide affidavits, declarations, or other evidence setting forth specific  
 facts demonstrating:
    - (i) the due diligence that was undertaken to locate and serve the  
 defendant; and
    - (ii) the defendant’s known, or last-known, contact information,  
 including the defendant’s address, phone numbers, email  
 addresses, social media accounts, or any other information used to  
 communicate with the defendant; and
  - (B) state the proposed alternative service method and why it comports  
 with due process.

13 Nev. R. Civ. P. 4.4(b)(1), (2).

14 Plaintiff was required to file a motion requesting for alternative service, which he did not do.  
 15 Therefore, service upon the defendants was not proper. Plaintiff is reminded that Rule 4(c)(1) of the  
 16 Federal Rules of Civil Procedure makes it clear that “[t]he plaintiff is responsible for having the  
 17 summons and complaint served within the time allowed under Rule 4(m).” See *Brown v. Am. Homes 4  
 18 Rent*, 2023 U.S. Dist. LEXIS 220806, \* 2 (D. Nev. Dec. 12, 2023). Plaintiff is advised to review both  
 19 the Federal and Nevada Rules of Civil Procedure regarding service.

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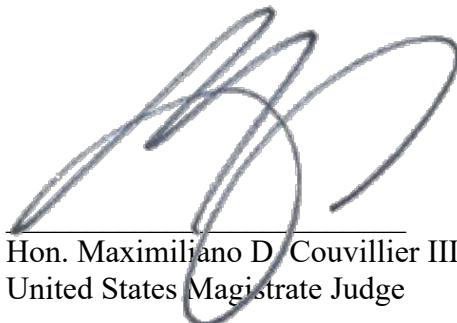
1 ACCORDINGLY,

2 **IT IS ORDERED that:**

3 1. The *Motion for Reconsideration* (ECF No. 78) is DENIED AS MOOT.  
4 2. The *Motion to Compel* (ECF No. 79) is DENIED.

5  
6 DATED this 17<sup>th</sup> day of June 2024.

7 IT IS SO ORDERED.



9  
10 Hon. Maximiliano D'Couvillier III  
United States Magistrate Judge

11 **NOTICE**

12 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and  
13 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk  
14 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal  
15 may determine that an appeal has been waived due to the failure to file objections within the specified  
16 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

17 This circuit has also held that (1) failure to file objections within the specified time and (2)  
18 failure to properly address and brief the objectionable issues waives the right to appeal the District  
19 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d  
20 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).  
21 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any  
22 change of address. The notification must include proof of service upon each opposing party's attorney,  
23 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may  
24 result in dismissal of the action.